

HOUSE No. 31

Accompanying the first recommendation of the Executive Office of Public Safety and Security
(House, No. 30). Municipalities and Regional Government.

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine.

AN ACT CREATING A STATEWIDE MUTUAL AID SYSTEM.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the
authority of the same, as follows:*

1 SECTION 1. Chapter 40 of the General Laws is hereby amended by inserting after section 4I
2 the following new section:-

3 Section 4J. Statewide Mutual Aid Agreement

4 There is hereby created a Statewide Mutual Aid Agreement, the purpose of which is to create
5 a framework for the provision of mutual aid assistance among the parties to the agreement in the
6 case of any public safety incident. The assistance to be provided pursuant to the agreement shall
7 include, but not be limited to fire service, law enforcement, emergency medical services,
8 transportation, communications, public works, engineering, building inspection, planning and
9 information assistance, mass care, resource support, public health, health and medical services,
10 search and rescue, and any other resource, equipment or personnel that a party to the agreement
11 may request or provide in anticipation of, or in response to, a public safety incident.

12 Article I. DEFINITIONS

13 Governmental unit: A city, town, county, a regional transit authority established under the
14 provisions of chapter 161B, a water or sewer commission or district established under the
15 provisions of chapter 40N or pursuant to a special law, a fire district, a regional health district
16 established under the provisions of chapter 111, the Massachusetts Port Authority, a regional
17 school district, a law enforcement council, or any other political subdivision of the
18 Commonwealth.

19 Employee: A person employed full time or part time by a governmental unit, any volunteer
20 officially operating under a governmental unit, and any person contractually providing services to
21 a governmental unit.

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Agreement: The Statewide Mutual Aid Agreement established by this section.

Law Enforcement Council: A non-profit corporation organized under G. L. c. 180 whose directorate includes municipal police chiefs and whose membership includes (i) municipalities whose participation in the council has been authorized by their principal executives, and (ii) other law enforcement agencies; and whose purpose is to provide:

a.) mutual aid to its members pursuant to mutual aid agreements;

b.) mutual aid and /or requisitions for aid to non-members consistent with the provisions of G. L. c. 40, s. 8G and/or G. L. c. 41, s. 99; and,

c.) enhanced public safety by otherwise sharing resources and personnel.

Party: A governmental unit that is a party to the agreement pursuant to this section.

Sending party: A party that renders aid or assistance to another party pursuant to the Agreement.

Requesting party: A party that requests aid or assistance from another party pursuant to the Agreement.

Public safety incident: Any event, emergency or disaster, that threatens or causes harm to public health, safety and/or welfare and that exceeds, or reasonably may be expected to exceed, the response or recovery capabilities of any governmental unit. These events include, but are not limited to, natural and manmade disasters, technological hazards, planned events, civil unrest, health related events and emergencies, acts of terrorism, and trainings and exercises that test and simulate the ability to manage, respond to or recover from any of the forgoing events.

Authorized representative: In the case of a city or town, the mayor, city manager, town manager, town administrator, executive secretary, police chief or on-duty shift commander of the police department, fire chief or on-duty shift commander of the fire department, health director or chair person of the Board of Health, and the emergency management director. In the case of a governmental unit that is not a city or town, the chief executive officer or on-duty shift supervisor.

Emergency Management Assistance Compact (EMAC): The interstate compact that provides for mutual assistance between the Commonwealth and certain other states pursuant to Chapter 339 of the Acts of 2000.

International Emergency Management Assistance Compact (IEMAC): The international compact that provides for mutual aid between the Commonwealth and certain other states and provinces of Canada pursuant to Section 58 of Chapter 300 of the Acts of 2002.

Commonwealth: The Commonwealth of Massachusetts.

Incident command system (ICS): The standardized National Incident Management System (NIMS) that establishes an on-scene management system of procedures for controlling personnel, facilities, equipment and communications from different agencies to work together towards a common goal in an effective and efficient manner. ICS is the chain of leadership and command at the scene of an emergency or other event for which mutual aid assistance is provided.

Mutual Aid Assistance: cross-jurisdictional provision of emergency services, materials or facilities by agencies or organizations to assist each other when existing resources are or may be inadequate.

Article II. PARTIES TO THE AGREEMENT

A. Cities and Towns

Except as provided for herein, all cities and towns of the Commonwealth automatically shall be parties to the agreement.

The mayor in the case of a city, the city manager in the case of a Plan D or E city, or the town manager, town administrator, or chair of the board of selectmen upon approval by a majority vote of the board of selectmen in the case of a town, is authorized to act on behalf of the city or town to opt out of the agreement by notifying the Director of the Massachusetts Emergency Management Agency (MEMA) in writing. The removal of said municipality from the agreement shall take effect ten (10) days following receipt by MEMA of the written notification.

If a city or town has opted out of the agreement as provided herein but wishes to rejoin the agreement, the mayor in the case of a city, the city manager in the case of a Plan D or E city, or the town manager, town administrator, or chair of the board of selectmen upon approval by a majority vote of the board of selectmen, is authorized to act on behalf of the city or town to rejoin the agreement by notifying MEMA in writing. Said municipality shall be deemed a party to the agreement thirty days following receipt by MEMA of the written notification.

B. Other Governmental Units

Except as provided for herein, every governmental unit that is not a city or town automatically shall be deemed a party to the agreement.

The chief executive officer of a governmental unit that is not a city or town is authorized to act on behalf of the governmental unit to opt out of the agreement by notifying the Director of MEMA in writing. The removal of said governmental unit from the agreement shall take effect ten days following receipt by MEMA of the written notification.

If a governmental unit that is not a city or town has opted out of the agreement as provided herein but wishes to rejoin the agreement, the chief executive officer of said governmental unit is authorized to act on behalf of the governmental unit to rejoin the agreement by notifying the

Director of MEMA in writing of its intent to rejoin the agreement. Said governmental unit shall be deemed a party to the statewide mutual aid agreement thirty days following receipt by MEMA of the written notification.

C. Cities and Towns in Adjoining States

A city or town that directly borders a city or town of the Commonwealth, but is in another state, may join the agreement as provided for herein. For such a city or town in another state to become a party to the agreement, a duly authorized officer of such a city or town shall provide written notice to the Director of MEMA of its intent to join the agreement together with a valid written certification of the lawfulness of his or her action and authority. Said city or town shall be deemed a party to the agreement ten days following receipt by MEMA of the written notification.

The officer or successor in office of such a city or town in another state that has joined the agreement shall be authorized to act on behalf of said city or town to remove itself as a party by notifying the Director of MEMA in writing of its intent. The removal of said city or town from the agreement shall take effect thirty days following receipt by MEMA of the written notification.

Article III. REQUESTS FOR MUTUAL AID ASSISTANCE

A request by a party to receive mutual aid assistance pursuant to the agreement must be made by an authorized representative of the requesting party and must be communicated to an authorized representative of the sending party or to MEMA. Such a request may be communicated orally or in writing. If communicated orally, the requesting party shall reduce the request to writing and deliver it to the sending party or to MEMA at the earliest possible date, but no later than seventy-two hours after making the oral request.

A party to the agreement may request mutual aid assistance during, in anticipation of, or as a result of a public safety incident.

An oral or written request for mutual aid assistance under the agreement shall include the following information: (1) a description of the public safety incident; (2) the nature, type and amount of personnel, equipment, materials, supplies or other resources being requested; (3) the manner in which said resources will be utilized and deployed; (4) a reasonable estimate of the length of time the resources will be needed; (5) the location to which the resources should be deployed; and (6) and the requesting party's point of contact.

A party that receives a request for mutual aid assistance shall, to the extent reasonable and practicable under the circumstances, provide and make available the resources requested by the requesting party. However, a party may withhold requested resources to the extent necessary to provide reasonable protection and coverage for its own jurisdiction.

Article IV. SUPERVISION; CONTROL; OPERATION OF EQUIPMENT

The requesting party shall be responsible for the overall operation, assignment and deployment of resources and personnel provided by a sending party consistent with the NIMS and the Incident Command System. The sending party shall retain direct supervision and command and control of personnel, equipment and resources provided by the sending party unless otherwise agreed to by the requesting party and sending party.

During the course of rendering mutual aid assistance under this Agreement, the sending party shall be responsible for the operation of its equipment and for any damage thereto unless the sending party and the requesting party agree otherwise.

Article V. COSTS AND REIMBURSEMENT

Except as set forth herein, all expenses incurred by the sending party in rendering mutual aid assistance pursuant to the Agreement shall be paid by the sending party. Nothing herein shall preclude a requesting party from agreeing to pay the expenses incurred by a sending party.

A sending party shall document its costs of providing mutual aid assistance under the Agreement, including direct and indirect payroll and employee benefit costs, travel costs, repair costs, and the costs of materials and supplies. A sending party also shall document the use of its equipment, and the quantities of materials and supplies used while providing mutual aid assistance under the agreement. A sending party shall cooperate with a requesting party in documenting costs associated with providing mutual aid assistance under the agreement and seeking reimbursement for such costs.

Except as set forth herein, there shall be no expectation of automatic, necessary or contractual reimbursement to a sending party for providing mutual aid assistance under the agreement. However, nothing in this section shall preclude a requesting party and a sending party from entering into agreements for reimbursement of costs associated with providing mutual aid assistance.

Except as otherwise agreed to by the requesting and sending parties, the requesting party shall seek reimbursement under any applicable federal and state disaster assistance programs for the costs of responding to and dealing with the public safety incident, including the mutual aid assistance costs incurred by all sending parties. The requesting party and each sending party shall receive, based on the documented costs of providing mutual aid assistance, its pro rata share of the disaster assistance compensation and reimbursement provided to the requesting party.

Article VI. OTHER MUTUAL AID AGREEMENTS

This section shall not be construed to affect, supersede or invalidate any other statutory or contractual mutual aid or assistance agreements involving parties to the agreement.

Nothing in this section shall preclude any party from entering into supplementary mutual aid agreements with other parties or jurisdictions.

In the event of a conflict between the terms of the Agreement and any lawful supplementary or preexisting statutory or contractual mutual aid assistance agreement, the terms of the supplementary or preexisting agreement shall take precedence over the Agreement.

Article VII. POWERS, LICENSES, PERMITS

While providing mutual aid assistance under the Agreement in the geographical jurisdiction or location of a requesting party, employees of a sending party shall be afforded the same powers, duties, rights and privileges as they are afforded in the sending party's geographical jurisdiction or location.

An employee of a sending party who holds a valid license, certificate, or other permit in their geographical jurisdiction evidencing the meeting of qualifications for professional, mechanical or other skills, shall be deemed similarly licensed, certified or permitted in the requesting party's geographical jurisdiction or location during such time as he or she is providing mutual aid assistance under the Agreement.

Article VIII. WAGES & COMPENSATION

Employees of a sending party, while providing mutual aid assistance under this Agreement, shall receive the same salary, including overtime, that they would be entitled to receive if they were operating in their own geographical jurisdiction. In the absence of an agreement to the contrary, the sending party shall be responsible for, and pay, all such salary expenses, including overtime.

Article IX. LIABILITY

In transit to, returning from, and while providing mutual aid assistance under the Agreement in the requesting party's jurisdiction or location, an employee of a sending party shall have the same rights of defense, immunity and indemnification that he otherwise would have under the law if he was acting within the scope of his employment under the direction of his employer. A sending party shall provide to, and maintain for, each of its employees who provide mutual aid assistance under the agreement the same indemnification, defense, right to immunity, employee benefits, death benefits, worker's compensation or similar protection, and insurance coverage that would be provided to such employees if they were performing similar services in the sending party's jurisdiction.

Each party to the agreement waives any and all claims and causes of action against all other parties that may arise out of their activities while rendering or receiving mutual aid assistance under this agreement, including travel outside of its jurisdiction/

Each requesting party shall defend, indemnify and hold harmless each sending party from all claims by third parties for property damage or personal injury which may arise out of the activities of the sending party or its employees, including travel, of providing mutual aid assistance under the agreement.

Article X. EMERGENCY MANAGEMENT ASSISTANCE COMPACTS

The director of MEMA or his designee shall be the persons authorized under EMAC and IEMAC to (i) receive, coordinate, and answer all requests to the Commonwealth to provide mutual aid assistance to another state or country pursuant to EMAC and IEMAC, and (ii) make and coordinate all requests on behalf of the Commonwealth to another state or country to receive mutual aid assistance pursuant to EMAC and IEMAC.

MEMA shall be the agency of the Commonwealth authorized to dispatch resources of the Commonwealth or of a governmental unit to another state or country to provide mutual aid assistance pursuant to EMAC and IEMAC. Employees of a governmental unit who, at the request and with the approval of MEMA, render mutual aid assistance to another state or country pursuant to EMAC or IEMAC shall be deemed to be emergency forces and officers of the Commonwealth for the limited purpose of effectuating the purposes of EMAC and IEMAC.

Employees of the Commonwealth or a governmental unit who, at the request and with the approval of MEMA, render mutual aid assistance to another state or country pursuant to EMAC or IEMAC shall, except as otherwise provided for herein or in EMAC or IEMAC, be provided the same compensation, rights, responsibilities, benefits and protections that they would be entitled to receive if they were operating in their own geographical jurisdiction.

The Commonwealth shall reimburse each governmental unit for the reasonable expenses incurred in rendering mutual aid assistance under EMAC or IEMAC at the request and with the approval of MEMA, including direct and indirect payroll costs, overtime costs, travel costs, repair costs, replacement costs, costs of materials and supplies, and injury or death benefits.

SECTION 2. All cities and towns of the Commonwealth, and other governmental units, automatically shall become parties to the Agreement set forth in Section 1 ninety days after the effective date of this section, unless a city, town, or other governmental unit opts out of the Agreement as provided for herein.